



Order Decisions

by Helen Slade MA FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 16 January 2020

Order Ref: ROW/3229716

'Order A'

- This Order is made under Section 118 of the Highways Act 1980 ('the 1980 Act') and is known as The East Riding of Yorkshire Council (Wawne Footpath no. 7) Public Path Extinguishment Order 2018.
- The Order is dated 24 July 2018 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when East Riding of Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.

Order Ref: ROW/3229717

'Order B'

- This Order is made under Section 26 of the Highways Act 1980 ('the 1980 Act') and is known as The East Riding of Yorkshire Council (Wawne Footpath No. 14) Public Path Creation Order 2018.
- The Order is dated 24 July 2018 and proposes to create a public footpath as shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when East Riding of Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.

Procedural Matters

1. The outstanding objections to both Orders A and B were made by Mr Carl Thompson and related to administrative errors contained in the schedules to both orders. East Riding of Yorkshire Council (the Order Making Authority or 'the OMA') acknowledged the errors and Mr Thompson agreed to withdraw his objections on the proviso that both Orders were submitted to the Secretary of State to be confirmed with the appropriate modifications. It has been agreed that the matter can be determined on the basis of the written papers on the file.
2. I have not made a site visit to the area as I consider that I can make my decision without the need to do so.

3. Although there have been no objections to the Orders in principle, since they have been submitted to the Secretary of State for confirmation, I must be satisfied that the relevant criteria have been met in each case.

The Main Issues

Order A

4. If I am to confirm this Order, Section 118 of the 1980 Act requires that I must be satisfied that it is expedient to stop up the path having regard to:
 - the extent that it appears likely that the footpath in question would, apart from the Order, be likely to be used by the public, and;
 - the effect that the extinguishment of the footpath would have as respects land served by it, account being taken of the provisions as to compensation.
5. Where an extinguishment is being considered concurrently with a creation order, Section 118(5) provides that I may have regard to the extent to which a path provided by the creation order will provide an alternative path or way when considering the likely future use of the path proposed for extinguishment.

Order B

6. The main legal criteria on which I need to be satisfied are set out in Section 26 of the 1980 Act which gives the local authority powers to create certain public rights of way. If I am to confirm the Order I need to be satisfied that there is a need for a public footpath in this location, and that it is expedient that it should be created. In determining the need for the footpath, I must have regard to:
 - The extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - The effect which the creation of the paths would have on the rights of persons with an interest in the land (taking account of the provisions for compensation).

Both Orders

7. The OMA has requested that modifications be made to both Orders to correct the notation used in the schedules so they accord with the notation shown on the Order plans. The correction of these errors was the basis for the qualified withdrawal of Mr Thompson's objections.
8. In accordance with section 118(5) of the 1980 Act I should consider the Creation Order (Order B) before considering the Extinguishment Order (Order A). I must have regard to the material provisions, if any, of the Rights of Way Improvement Plan ('ROWIP') produced by the County Council and I must also take into account government advice, relevant legal precedents and other legislation which is applicable.

Reasons

Order B

9. There have been no objections to the Creation Order (Order B) which will provide a route linking adjoining rights of way with the riverside path along the banks of the River Hull.
10. The proposal is in line with the policies in the ROWIP relating to the creation of circular recreational routes and links to places of public interest. I accept that the riverside route is likely to be a place that the public wish to use, particularly local people from the surrounding area.
11. I am satisfied from my examination of the papers on the file that it is expedient to confirm Order B.

Modification to the Schedule

12. The Schedule to the Order describes the route of the proposed path as leading from Point A to Point B, whereas the map shows these points as Points G and H respectively. I intend to make the requested modification to the Schedule to substitute the letters G and H accordingly.

Order A

13. Although it would seem that Footpath 7 in the parish of Wawne may currently be difficult to use, I must disregard that issue in assessing its likely future use as if no order were to be made. I am able to take into account the extent to which the creation of the footpath which is the subject of Order B would provide an alternative route.¹
14. There have been no objections to the proposed extinguishment of Footpath 7 in the Parish of Wawne which suggests that it would not be likely to be used to any great extent in the future if it were to remain in place. I have already concluded that Order B ought to be confirmed and the route created as a consequence will provide an alternative, albeit circuitous, route in substitution for Footpath 7.
15. No issues have been raised in connection with the effect on land served by the existing route and I am therefore satisfied that it is also expedient to confirm Order A.

Modification to the Schedule

16. The Schedule to the Order describes the route of the path to be extinguished as running from Point A to Point B, whereas the map shows these points as Points J and K respectively. I intend to make the requested modification to the Schedule to substitute the letters J and K accordingly

Conclusions

17. Having regard to these and all other matters raised in the written papers on file I conclude that both Order A and Order B should be confirmed with modifications.

¹ See section 118(5) of the 1980 Act

18. However, although I have considered the merits of the Orders by looking at the Creation Order (Order B) first and then examining the case for the Extinguishment Order (in accordance with the legislative requirements) I must be careful to avoid any unforeseen circumstances when confirming the Orders. Were I to confirm the Orders in the same sequence, part of the route created by Order B would then be extinguished by Order A where it overlaps with the current route of Footpath 7. I therefore propose to confirm the Orders in the reverse sequence to avoid this unintended consequence.

Formal Decisions

Order A

19. I confirm the Order subject to the following modifications:

- In line 2 of the Schedule to the Order, substitute the letter 'J' for the letter 'A';
- In line 6 of the Schedule to the Order, substitute the letter 'K' for the letter 'B'.

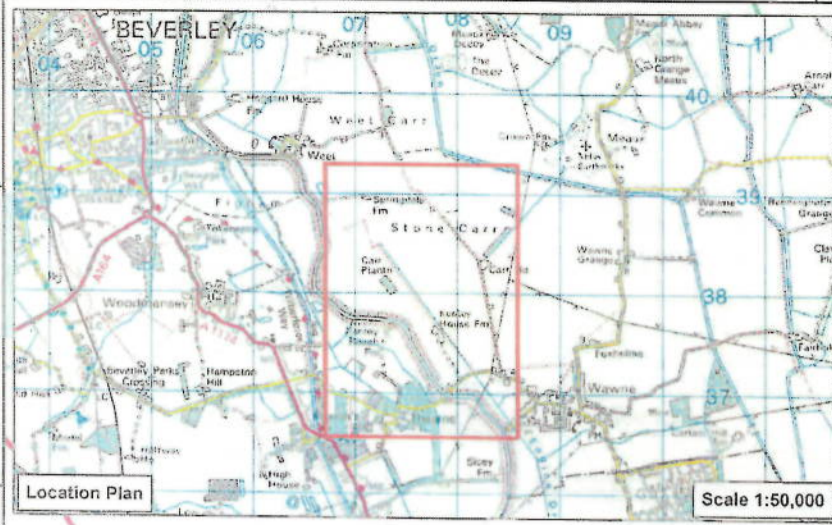
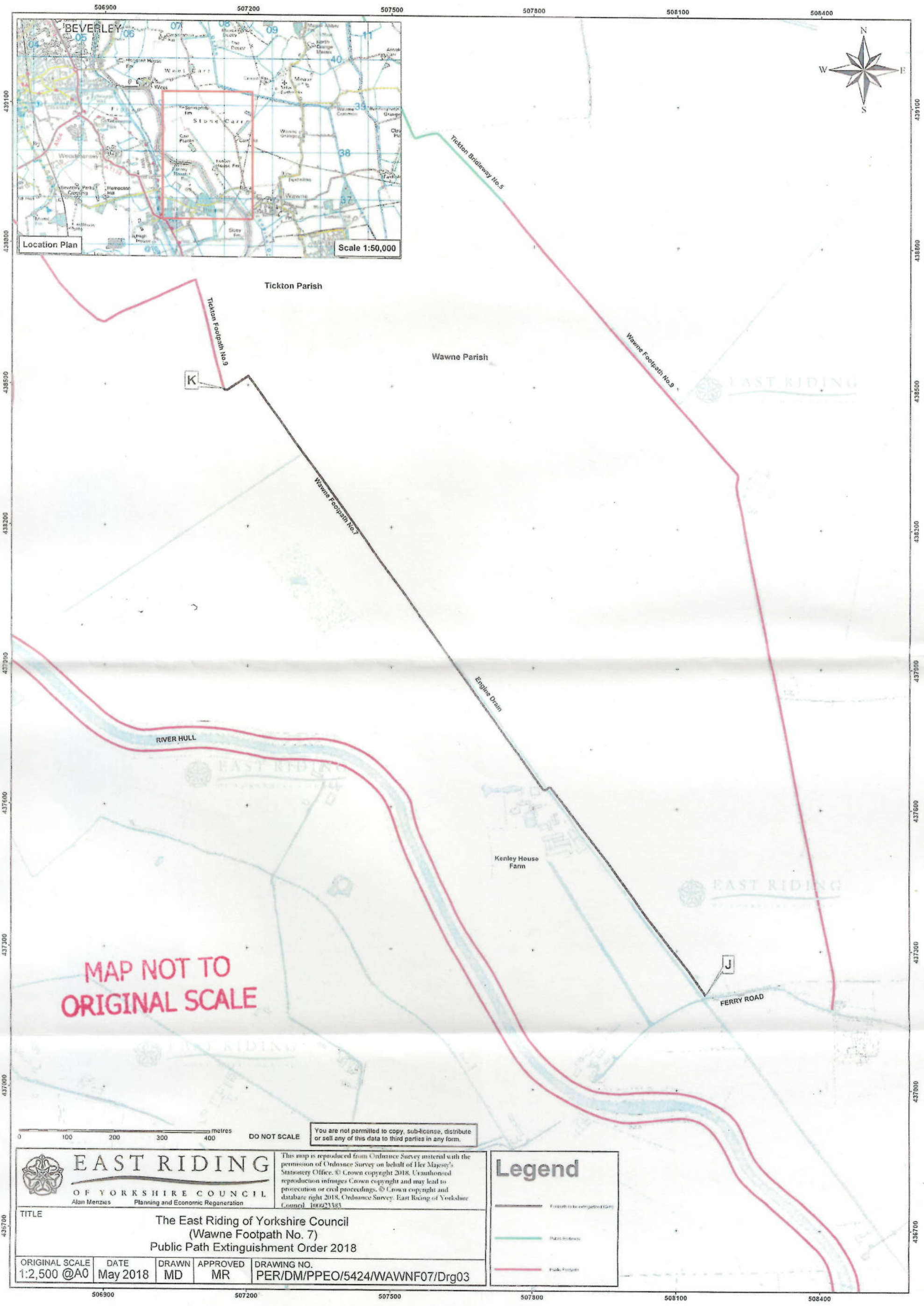
Order B

20. I confirm the Order subject to the following modifications:

- In line 2 of the Schedule to the Order, substitute the letter 'G' for the letter 'A';
- In line 6 of the Schedule to the Order, substitute the letter 'H' for the letter 'B'.

Helen Slade

Inspector



MAP NOT TO ORIGINAL SCALE

0 100 200 300 400 metres **DO NOT SCALE**

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Legend

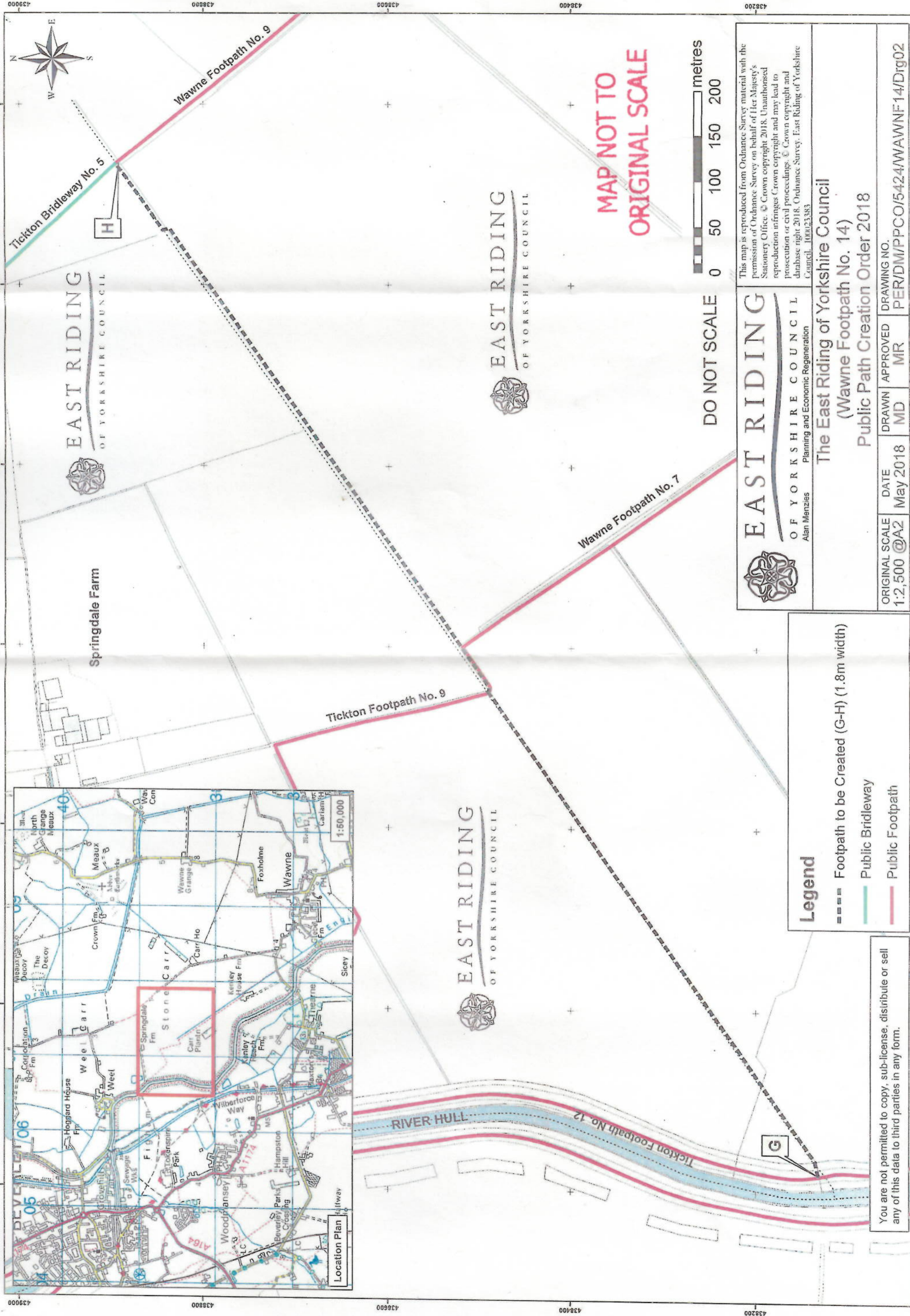
- Footpath to be extinguished (G4)
- Public Highway
- Public Footpath

TITLE The East Riding of Yorkshire Council (Wawne Footpath No. 7) Public Path Extinguishment Order 2018				
ORIGINAL SCALE	DATE	DRAWN	APPROVED	DRAWING NO.
1:2,500 @A0	May 2018	MD	MR	PER/DM/PPEO/5424/WAWNF07/Drg03

506900 507200 507500 507800 508100 508400

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MAP NOT TO ORIGINAL SCALE

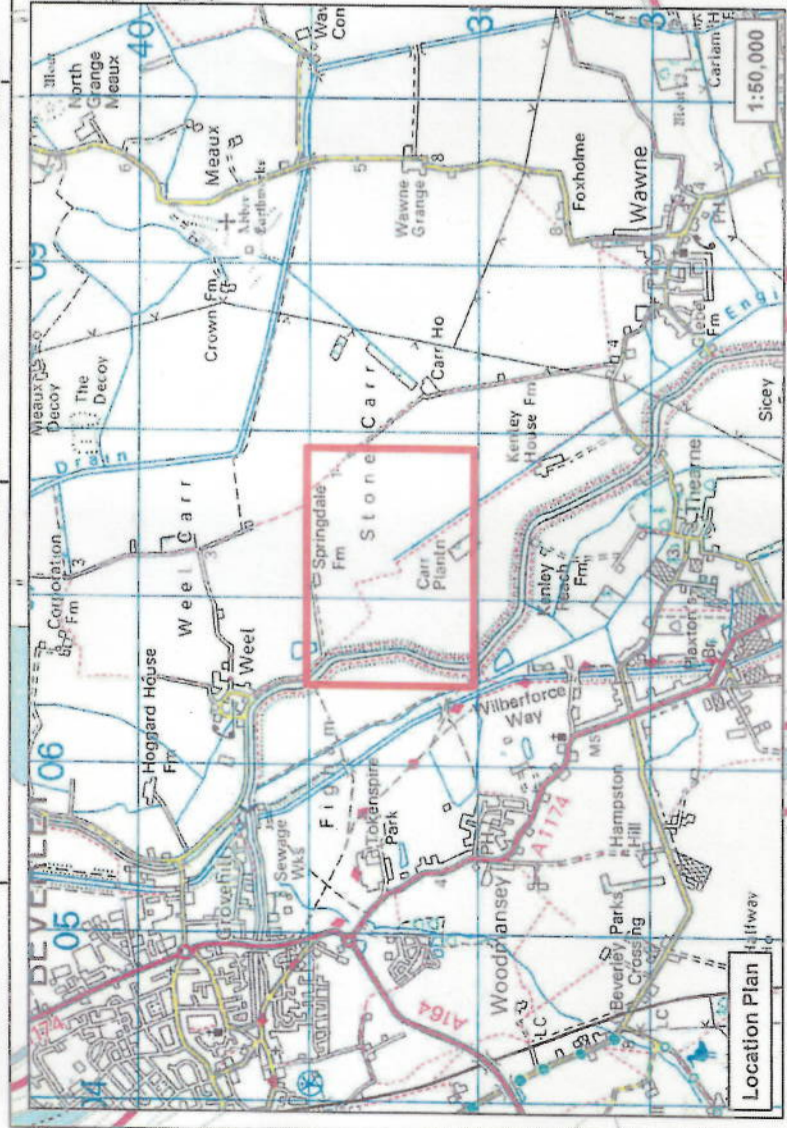
DO NOT SCALE 0 50 100 150 200 metres

<p>EAST RIDING OF YORKSHIRE COUNCIL</p> <p>Alan Menzies Planning and Economic Regeneration</p>		<p>This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationery Office. © Crown copyright 2018. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. © Crown copyright and database right 2018. Ordnance Survey. East Riding of Yorkshire Council. 100023383</p>	
<p>The East Riding of Yorkshire Council (Wawne Footpath No. 14) Public Path Creation Order 2018</p>			
ORIGINAL SCALE	DATE	DRAWN	APPROVED
1:2,500 @A2	May 2018	MD	MR
DRAWING NO.		PER/DM/PPCO/5424/WAWN/14/DrG02	

Legend

- Footpath to be Created (G-H) (1.8m width)
- Public Bridleway
- Public Footpath

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Tickton Footpath No. 9

Wawne Footpath No. 7

Wawne Footpath No. 9

Tickton Bridleway No. 5

EAST RIDING
OF YORKSHIRE COUNCIL

EAST RIDING
OF YORKSHIRE COUNCIL

EAST RIDING
OF YORKSHIRE COUNCIL

Springdale Farm

Location Plan

RIVER HULL

Tickton Footpath No. 12

H

G

